

ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

RECEIVED  
FEB 22 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Establishment of a Class A ) MM Docket No. 00-10 ✓  
Television Service ) MM Docket No. 99-292  
 ) RM 9260  
 )  
 )

To: The Commission

**REPLY COMMENTS OF TELEMUNDO GROUP, INC.**

Telemundo Group, Inc. ("Telemundo"), by its attorneys, submits herewith its reply comments in the Commission's above-captioned proceeding<sup>1</sup> to implement the Community Broadcasters Protection Act of 1999<sup>2</sup> and to prescribe regulations establishing a Class A television service for qualifying low power television ("LPTV") stations.

In its initial comments, Telemundo urged the Commission to adopt straight-forward alternative class A eligibility criteria for predominantly foreign language stations, thereby ensuring that LPTV stations with reduced access to qualifying programming still would have the protection Congress intended. In these reply comments, Telemundo again wishes to emphasize the importance of establishing such criteria to ensure continued foreign language service to underserved communities. Telemundo also urges the Commission to adopt the proposals of

<sup>1</sup> Establishment of a Class A Television Service, *Order and Notice of Proposed Rule Making*, MM Docket Nos. 00-10, 99-292, FCC 00-16 (rel. Jan. 13, 2000) ("Notice").

<sup>2</sup> Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I (*codified at* 47 U.S.C. § 336(f)) ("CBPA").

No. of Copies rec'd 048  
List A B C D E

several commenters to subject class A applications to petitions to deny and to ensure that full power stations retain the ability to revert to their traditional channel after the DTV transition.

**I. PREDOMINANTLY FOREIGN LANGUAGE LPTV STATIONS DESERVE CLASS A PROTECTION.**

As Telemundo stated in its initial comments, a simple “either-or” application of the CBPA’s eighteen-hour/three-hour programming requirements to predominantly foreign language LPTV stations would allow the Commission to determine easily which stations warrant class A protection. Foreign language LPTV stations satisfying the alternative criteria would not be penalized for the reduced access to qualifying programming and already underserved Hispanic viewers would be assured of continued access to news, information and entertainment programming in Spanish. Telemundo believes that if the alternative criteria portion of the CBPA stands for anything, it surely is meant to protect valuable “niche” programming offered by foreign language stations that generally is unavailable on full power stations.

The contrary arguments of Nicolas Communications Corporation (“Nicolas”) cannot be supported. Nicolas asserts that the Commission should not expand class A eligibility to foreign language stations<sup>3</sup> and claims that “similarly situated English language stations” anticipated the local programming requirements Congress ultimately passed and adjusted accordingly.<sup>4</sup> Nicolas’ contentions wither under scrutiny.

First, it would not be unduly expansive to grant class A protection to otherwise qualifying foreign language stations. The Hispanic community already is generally underserved and the number of stations that would attain class A eligibility under the alternative criteria would be

---

<sup>3</sup> Nicolas Comments at 11.

<sup>4</sup> *Id.* at 12.

limited. Second, Nicolas' contention that foreign language LPTV stations had the same notice as English language stations to adjust their programming to qualify for class A status is disingenuous and totally misrepresents the CBPA's purpose. Congress determined that an LPTV station would be eligible for class A status if it met certain programming requirements during the 90 days preceding enactment.<sup>5</sup> Congress established these unique retrospective eligibility requirements precisely to prevent the opportunistic programming manipulation Nicolas contemplates. Otherwise, Congress simply would have established prospective eligibility requirements and any LPTV station could claim eligibility. For Nicolas to oppose the establishment of alternative eligibility criteria for foreign language stations on such contrivance is outrageous.

Congress took the extra step of authorizing the Commission to establish alternative eligibility criteria. It plainly intended that such discretion not go unexercised. Whatever alternative criteria the Commission chooses to adopt, there is no better candidate for such class A protection than a predominantly foreign language LPTV station. These stations have provided and continue to provide valuable programming to their communities. Arguments to the contrary should be rejected outright.

## **II. CLASS A APPLICATIONS SHOULD BE SUBJECTED TO PETITIONS TO DENY.**

Telemundo supports the proposals of Pappas Telecasting Companies ("Pappas"), the Association of America's Public Television Stations ("APTS"), the Society of Broadcast Engineers ("SBE"), and others to subject class A applications to petitions to deny.<sup>6</sup> Given the

---

<sup>5</sup> 47 U.S.C. § 336(f)(2)(A)(i).

<sup>6</sup> Pappas Comments at 20; APTS Comments at 15-16; SBE Comments at 5.

number of LPTV stations claiming class A eligibility, it is a statistical likelihood that a significant number of applications will be technically deficient. A petition to deny period would provide important protection against impermissible interference that might result. Such a period also would permit interested parties to scrutinize applicants' evidence of compliance with the eligibility requirements and ensure that ineligible LPTV stations do not gain class A protection.

The Commission, faced with a 30-day statutory processing period,<sup>7</sup> proposes to grant class A licenses pursuant to a "minor modification" scheme, thereby possibly precluding interested parties from submitting petitions to deny.<sup>8</sup> Nonetheless, to maintain the credibility of its licensing processing, the Commission should subject the applications to petitions to deny. As an initial matter, it is not clear that the Commission is authorized to grant class A licenses under a minor modification scheme given the requirements of Section 307(c).<sup>9</sup> Congress does not indicate in the CBPA that it intended to supersede Section 307's requirements in issuing class A licenses. Accordingly, the Commission may not be authorized to create this licensing paradigm. It would not be reasonable for the Commission to reject a petition to deny period on the basis of less than clear authority.

Moreover, subjecting applications to petitions to deny would assist the Commission – which does not have the resources to authenticate the potentially great number of class A applications. Interested parties could act as vital protectors of the nation's spectrum resources and help prevent ineligible applicants from improperly obtaining class A licenses.

---

<sup>7</sup> 47 U.S.C. § 336(f)(1)(C).

<sup>8</sup> *Notice* at ¶42.

<sup>9</sup> 47 U.S.C. § 307(c).

The Commission has thirty days to grant class A licenses to a “*qualifying* low-power television station.”<sup>10</sup> If issues are raised in a petition to deny period that cast reasonable doubt about the qualifications of a class A applicant, the Commission is not obliged to grant a license within the thirty day period. Accordingly, the Commission should subject applications for class A licenses to petitions to deny within the parameters of the CBPA.

### **III. THE COMMISSION MUST PRESERVE FULL POWER STATIONS’ ABILITY TO REVERT TO THEIR TRADITIONAL CHANNEL.**

Telemundo agrees with the statements of APTS, Sinclair Broadcast Group (“Sinclair”), and Cordillera Communications (“Cordillera”) that the Commission must protect full power stations seeking to revert to their traditional analog channel and maximize after the close of the DTV transition.<sup>11</sup> Telemundo agrees that it would be unreasonable for the Commission to assume that Congress created an elaborate maximization structure only to provide temporary protection for full power digital stations. Congress permits full power stations to return either one of its paired channels after the close of the DTV transition.<sup>12</sup> Congress made plain in the CBPA that class A stations could not harm the ability of existing viewers to continue receiving full power service.<sup>13</sup> Some viewers of full power stations inevitably would lose programming service if a reverting station must accept a reduced digital service area after the transition. That outcome is inconsistent with the CBPA. Accordingly, the Commission must preserve the ability of full power stations to revert to their traditional channel and maximize digital facilities.

---

<sup>10</sup> 47 U.S.C. § 336(f)(1)(C) (*emphasis added*).

<sup>11</sup> Sinclair Comments at 14-17; APTS Comments at 8-9; Cordillera Comments at 5-8.

<sup>12</sup> 47 U.S.C. § 336(c).

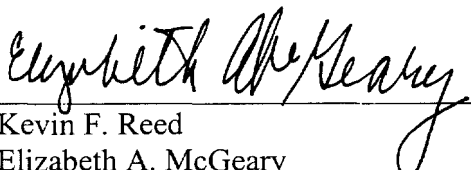
<sup>13</sup> 47 U.S.C. § 336(f)(7)(A).

## **Conclusion**

Predominantly foreign language LPTV stations that have met one of the CBPA's two programming quantity requirements should be eligible for class A status under the alternative eligibility provision. This would not expand significantly the pool of class A licenses and would ensure stability in providing unique Spanish-language programming. To make certain that the number of class A licenses is limited only to those eligible, the Commission should subject applications to petitions to deny. Additionally, the Commission should ensure that full power stations can revert to their analog channel and maximize those facilities. By adopting these policies, the Commission will balance the interests of full power and low power stations as Congress did in the CBPA and will protect viewers' ability to continue receiving valuable programming.

Respectfully submitted,

**TELEMUNDO GROUP, INC.**

By:   
Kevin F. Reed  
Elizabeth A. McGeary  
Scott S. Patrick

DOW, LOHNES & ALBERTSON, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 776-2000

Its Attorneys

February 22, 2000